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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 539

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion, order and decree of the District Court. (R. 40 to 46.) The affirmance by Court of Appeals (Petition, Appendix, pp. i, ii) is not yet reported.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to section 347 of Judicial Code (28 U.S.C., § 1254).

QUESTION PRESENTED.

Whether the seizure order is within the Constitutional power of Congress?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

As shown in the Petition.

STATEMENT.

Counsel for respondent having neither denied or even disputed the Constitutional or factual correctness of the instant Petition for Writ of Certiorari, this Brief will seek to more sharply focus the politico-economic issues back of the constitutional questions presented in the Petition, and their great importance, in this crucial time when so many governments are also faced with perplexing political, economic and social conflicts.

The Court may take judicial notice of the fact that Intergovernmental relations between the federal and state governments are being re-examined by the Commission on Intergovernmental Relations whose report is due very soon.

Also that Canada is engaged in a similar study of the Dominion-Provincial Relations, with no final report made. Australia has subjected the borrowing and taxing power of its states to federal control.

It is well known that the States of the Weimar Republic became mere territories, in 1934 when the Neuaufbegestz (Reconstruction Act) transferred to the Reichstag, the sovereign powers of the Weimar States.

Except for the Declaration of Independence (1 Stats. 1), the Preamble to the Constitution, and the equal rights to life and liberty guaranteed by those guardians, we would now be as fully at the mercy of those who own the earth, or who have been allowed tax favors and privileges by the legislative arms, as

were all except the aristocracy in Ancient Rome and other governments, some of which are still not unknown.

The Rise of American Civilization, by Charles and Mary Beard (1930) says, at page 294:

> "* * * the destruction of landed privilege in America by the forces unchained in the war for Independence was perhaps as great and as significant as the change wrought in the economic status of the clergy and nobility during the holocaust of the French Revolution."

Thomas Jefferson said:

> "It is too soon yet in our country to say that every man who can not find employment, but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But, it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small holders are the most precious part of a State."
>
> Thos. Jefferson, Writings, Monticello Ed. Vol. 19, p. 18.

> "It is conceded that the policy of the State is to encourage the formation of Irrigation Districts, so that the arid lands may be brought under cultivation, the welfare and comfort of its inhabitants enhanced, and the taxable value of the State enlarged. * * * The argument that unless general taxes are made superior, counties, cities and towns will perish finds little support when it is understood that the lands within an Irrigation District would afford little sustenance * * * if it were not for the benefits which the

> formation of an Irrigation District and the resultant opportunity to bring land under cultivation provide. In furtherance of this plan, the Legislature * * * has spoken, and assured those who advanced the capital to make the improvements that the land thus improved shall repay the amounts advanced * * *, and have enacted that a lien shall subsist upon said lands to insure the payment thereof. Such is the announced public policy. It is fair, equitable and just and should not be struck down by the Courts unless there is a very clear and compelling reason for so doing."
>
> *Magee v. Whiteacre,* 106 Pac. (2d) 751 (Nev.).

The Oregon Supreme Court in all cases, such as *Kiesel v. Bishop,* 129 Pac. (2d) 276 and *Noble v. Yancey,* 241 Pac. 338, fully supports this statement.

This Court has decided a long line of cases since *Von Hoffman v. Quincy,* 4 Wall. 535 (1867), re-affirming the settled constitutional principle:

> "Where a state has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given can not be withdrawn until the contract is satisfied."

That the law in effect when the bonds were issued governs the contract, has also been steadfastly adhered to since *La. ex rel. Nelson v. St. Martin's Parish,* 111 U.S. 716 (1884). The Oregon Supreme Court likewise upholds this principle in *Kollock v. Bernard,* 242 Pac. 847, when the Oregon legislature previously "consented" to amend the same statute that governs the bonds at bar.

The Arkansas Legislature "consented" to merely extend the redemption period for tax delinquent land holders. It was allowed by the Arkansas Supreme Court, but reversed by this Court in *Wood v. Lovett,* 313 U.S. 362 to protect an owner of tax title certificates, who complained that the time extension impaired rights protected by Art. I, sec. 10.

The bonds and judgment owned by petitioner (R. 6-10) are valid, binding and unpaid obligations authorized by the State of Oregon in the exercise of its sovereign power to borrow money and to promote the equal opportunity and general welfare of all persons within its Dominium.

The obligation evidenced by the bonds at bar guarantees to each bondholder a continuing and irrepealable first, prior and paramount right and lien upon all of the land in the district, including all rents, issues and profits. *Noble v. Yancey* (Ore.), 241 Pac. 338; *In re Horsefly Irrigation District* (Ore.), 254 Pac. 825.

No Bankruptcy Act allows any interference with the liens upon land for unpaid ad-valorem taxes. They must be respected in any bankruptcy proceedings. *Fallbrook v. Cowan,* 131 F. (2d) 513 (C.A. 9), cert. den., 320 U.S. 735. *Arkansas Corp. v. Tompkins,* 313 U.S. 132.

Judicial notice may also be taken of the fact that the municipal bonds owned by petitioner, and in legal effect seized and annulled by the District Court, are constitutionally tax exempt. (38 Att. Gen. Ops. 563, 1937.) Respondent is unable to cite any statute war-

ranting the seizure order affirmed by the Court of Appeals, or authorizing respondent to carry out the order and decree of the District Court. (R. 40-46.)

Respondent does not even attempt to deny that the seizure order and decree, as applied, contravenes Art. I, Sec. 10, Cl. 1, the Fifth, Ninth, Tenth and Fourteenth Amendments of the U.S. Constitution.

> "It is important to remember that the powers of the National Government in enforcing the system of bankruptcy are purely administrative. The federal government has no proprietary interests * * * For the federal government to take over the estate of the bankrupt * * * without making full provision for the discharge of taxes owing to the State, or its subordinate municipalities would be to prefer private to public rights and would constitute a wholly unjustifiable interference with the State in matters pertaining peculiarly to its authority." *In re Kallak,* 147 Fed. 276.

It is even more important to remember that Summer Lake Irrigation District is not a taxpayer, but a State tax collector, with no more pecuniary rights or interest in or to the property or revenues of the district, than has any other Oregon tax collector.

In short, here is an Oregon tax collector seeking authority from a Federal Court to violate the specific duties which the applicable Oregon laws command him to perform.

If a State Court were to issue an order and decree restraining or in any way obstructing the collection of taxes lawfully due the Federal Government, with

or without the consent of Congress, the "interference" would be no different.

Whether the annual ad-valorem land tax commanded by law would be paid, is irrelevant. In clear violation of law, no tax has even been placed upon the land since 1932. (R. 17.) If a private promisor cannot take advantage of his own failure, it is at least equally *ultra vires* the power of the judiciary to allow tax collectors to take advantage of their own failures. For this Court has said:

> "Contracts made by a State or its local governments are to be characterized by a more scrupulous regard for justice and higher morality than belong to ordinary transactions of individuals."
> *Woodruff v. Trapnall,* 10 Howard, 190, 207.

The original Chap. IX (11 U.S.C.A. 301-304) was held *ultra vires* in *Ashton v. Cameron County,* 298 U.S. 513. Rehearing petitions and many A. C. briefs were denied. This is extensively reviewed in *Brush v. Comm.,* 300 U.S. 352 at 366 to 369. In the *Bekins* (304 U.S. 27) case, the Court did not say it reversed or overruled the principle of intergovernmental immunity, as construed and applied in a very long line of cases both before and after the Bekins decision.

In *Poindexter v. Greenhow,* 114 U.S. 270 (1885) the failure, neglect and refusal of public tax officials to obey the law, as has been admitted by respondent (R. 17) is characterized as "communism". That was the view in 1885.

This Court has also decided that a restrictive covenant is "not unconstitutional", but that no Court

may be used to enforce it. *Shelley v. Kraemer,* 334 U.S. 1. Here, the Oregon statute (Oregon Code, 1930, Title XLVIII, secs. 48-101 et seq.) is an "Unrestricted covenant" guaranteeing to all persons the equal right to own, possess and use any land in Summer Lake Irrigation District, regardless of race, color or creed. Should this fertile irrigated land be unwanted by home seekers, why do the "consenting" bond owners want it? The owners of $262,900 of the $319,100 bonds issued also claim "ownership" of the very land that has escaped taxation since 1932, in utter violation of controlling Oregon law. Petitioner's rights as a bondholder are antagonistic to the interests of the bond owning land holders. Other circuits summarily disallow Ch. IX petitions under like discriminatory circumstances. *Kaufman v. Mitchell,* 116 (Fed. (2d) 959 (C.A. 5); *Belleair v. Groves,* 132 Fed. (2d) 542 (C.A. 5), cert. denied, 318 U.S. 769. This point was raised in the District Court. (R. 57, 62.) It was not answered by the District Court or the Court of Appeals. It is again raised in the petition at page 4, and regardless of the main constitutional question presented, is a compelling reason for disallowing the proceeding, under the equitable rule also applied in *Am. Mut. Life v. Avon Park,* 309 U.S. 651.

It is settled in this republic that "The private holder of land never enjoys tax immunity as a right * * *" *Petition of S.R.A.,* 18 N.W. (2d) 442, cert. denied, 327 U.S. 558.

The effect of seizing the constitutionally protected vested property right of municipal bond owners, is to

give their savings to tax avoiding or tax evading private land holders, and in effect to compel the bond-owner to pay the taxes unlawfully escaped by the land holder, mortgagees and other remaindermen.

The theory back of every bankruptcy act, prior to Ch. IX is that the debtor come under the jurisdiction of the bankruptcy Court. Ch. IX was expressly excluded from the Chandler Amendments to the Bankruptcy Act, governing private company compositions and re-organizations. No jurisdiction over any property is authorized by Ch. IX. *Berry v. Root,* 148 Fed. (2d) 945 (C.A. 5); *Rittenoure v. Edinburg,* 159 Fed. (2d) 989 (C.A. 5), where it was decided:

> "Ch. IX is a special extension * * * not a true bankruptcy in that the property of the debtor is not surrendered to the Courts nor are its debts discharged."

Charles H. Weston, Esq., Assistant to the Attorney General of the United States issued a formal opinion addressed to Hon. H. W. Summers, chairman, House Judiciary Committee, from which opinion the following is quoted:

> "In my opinion it is beyond the power of Congress, even with State consent, to enact any bankruptcy law which is applicable to the States themselves or to political subdivisions which are merely departments or branches of the State government." (Apr. 21, 1933).

Art. I, Sec. 8, Cl. 1 empowers Congress "to establish * * * UNIFORM laws on the subject of bankruptcies throughout the United States". No

State can constitutionally "oppose" any lawful power confided to the Congress by this Article. "The national purpose to establish uniformity necessarily excludes State regulation". *Int. Shoe Co. v. Pinkus,* 278 U.S. 261. There is serious conflict among the circuits about this, as shown in the instant Petition on pages 5 to 9. This conflict is also sufficient reason for granting the instant Petition.

It is respectfully submitted that the seizure order contravenes Art. I, Sec. 10, Cl. 1; Art. IV, Sec. 3, Cl. 2, and the Fifth, Ninth, Tenth and Fourteenth Amendments of the U.S. Constitution, and that Ch. IX (11 U.S.C.A. § 401-403) the base of this proceeding, as applied by the Courts below is *ultra vires* the bankruptcy power authorized by Art. I, Sec. 8, Cl. 1.

Wherefore, the Petition presents fundamental federal Constitutional questions which the Bekins decision did not settle. In the crucial days ahead, the importance of each State meeting its land tax obligations, will be greater than ever. Such a Constitutional duty is neither "unsubstantial or frivolous". It is fundamental.

It is respectfully submitted that the Petition should be granted.

Dated, San Francisco, California,
February 1, 1955.

Respectfully submitted,
J. RUPERT MASON, *Petitioner,*
In Propria Persona.

FEB 23 1955
HAROLD B. WILLEY, Clerk

No. 539

In the Supreme Court of the United States

OCTOBER TERM, 1954

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

PETITION FOR A REHEARING.

J. RUPERT MASON,
1920 Lake Street, San Francisco 21, California,
Petitioner Pro Se.

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In the Supreme Court of the United States

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No. 539

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

PETITION FOR A REHEARING.

Petitioner, J. Rupert Mason, respectfully submits this petition for a rehearing on the following substantial grounds, not raised heretofore.

(1) Whether the order and decree (R. 40-46) affirmed by the Court of Appeals restrains the assessment or collection of land taxes, contrary to the controlling Oregon law, contrary to 26 U.S.C.A. 3653, and exceeds the jurisdiction authorized by Art. III, Sec. 2, cl. 2, as construed and applied in *Allen v. Regents,* 304 U.S. 439, 445-449 (1938)?

(2) Whether the order and decree is repugnant to "Equal footing" clause, as construed and applied in *U. S. v. Texas,* 339 U.S. 707, 719-720, and *U. S. v. Oregon,* 295 U.S. 1, 14, and *Coyle v. Smith,* 221 U.S. 559, 566?

(3) Whether the use and sovereign control of the specified land within Summer Lake Irrigation Dis-

trict involve national interests or national responsibilities, giving rise to paramount national duties?

Respondent, having waived his right to deny any of the Constitutional objections raised in the petition, they need not be discussed in this Rehearing Petition, which raises, for the first time the above substantial Constitutional questions, in a proceeding bottomed upon 11 U.S.C.A. Secs. 401-403.

Respondent did not even attempt to deny that the "death sentence" decree and seizure order (R. 40-46) of the valid, binding and unpaid Oregon bonds and judgment (R. 6-10) owned by petitioner, and never in *custodia legis,* contravenes Art. I, Sec. 10, cl. 1 and the 5th, 9th, 10th and 14th Amendments of the Constitution of the United States.

Respondent is no ordinary "debtor", but a mere statutory land tax collecter vested with specific taxing powers, and fixed continuing assessment and enforcement duties by the State of Oregon, in the constitutional exercise of that State's inherent, sovereign power to borrow money.

Respondent's duty, in this respect, is controlled by Ore. Laws 1917, ch. 357, sec. 27, construed and applied by the Supreme Court of Oregon in *Gibbons v. Hood River I. D.,* 133 Pac. 773; *Noble v. Yancey,* 241 Pac. 338; *Kiesel v. Bishop,* 129 Pac. (2d) 276; *Enterprise I. D. v. State,* 69 Pac. (2d) 953.

Land charged to pay such bonds, cannot escape. Laws 1919, ch. 357, sec. 37. Construed in *Medford I. D. v. Hill,* 190 Pac. 957. See, also, *Mobile v. Wat-*

son, 116 U.S. 289; *Engleman Land Co. v. Donna Irrig. Dist.* (Tex.), 209 S.W. 428; *Shapleigh v. San Angelo* (Tex.), 167 U.S. 646.

The function of levying and collecting taxes on this specified land within the dominium of a State, is an act of governing. It is "One of the highest prerogatives of State sovereignty."

The federal Courts have steadfastly recognized that they possess no inherent power to enjoin the assessment or collection of State land taxes. *Heinie v. Levee Comm.,* 19 Wall. 655, seems squarely in point.

In *Meriwether v. Garrett,* 102 U.S. 472, it was said:

> "Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this (tax) authority at once so delicate and so important."

Even when the constitutionality of such a State tax has been questioned, Mr. Justice Stone said:

> "The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it."
>
> *Mathews v. Rogers,* 284 U.S. 521.

No one, except your petitioner, has asserted any federal right in the District Court, the Court of Appeals or in this Court.

A sovereign State has the duty to affirmatively exercise its power to assess and collect annual taxes on specified land, when money has been borrowed by a political subdivision pursuant to laws fixing and controlling such sovereign duty.

The case of *Transportation Co. v. Wheeling*, 99 U.S. 273, upheld a city tax on steamers engaged in interstate commerce, and in so doing said:

> "The sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission, except those means which are employed by Congress to carry into execution the powers given by the people to the Federal government, whose laws, made in pursuance of the Constitution, are supreme."

In 43 *Corpus Juris*, page 211, it is said:

> "As the State may not, by any law or contract, surrender or restrict any portion of the sovereignty which it holds in sacred trust for the public weal, so a municipal corporation, as a governmental agency, can not surrender or contract away its governmental functions and powers, nor such functions as are regarded as mandatory, and any attempt to barter or surrender them is invalid."

> "The authority conferred on this court by Sec. 30 of the bankruptcy act to prescribe all necessary rules, forms, etc. . . . is plainly limited to provisions for the execution of the act itself, and does not authorize additions to its substantive provisions." *Meek v. ContuCo Banking Co.*, 268 U.S. 426.

The clearest interpretation of the very limited jurisdiction vested in the Courts by Ch. IX, the base of this cause, was made by the Fifth Circuit in the case of *Berry v. Root,* 148 F. (2d) 945, cert. denied, 326 U.S. 755. The Michigan Supreme Court, long after a Ch. IX decree had become final, decided that the approved Ch. IX plan could not be carried out. See *Clark v. City of Royal Oak,* 38 N.W. (2d) 413, cert. denied, 338 U.S. 890.

If one State could waive its sovereignty over titles to land within its dominium, it would no longer be on an "Equal footing" with other States, as required by the Constitution as construed in *Coyle v. Smith,* 221 U.S. 559, 566; *U. S. v. Oregon,* 295 U.S. 1, 14; *U. S. v. Texas,* 339 U.S. 707, 719-720.

The constitutional issues raised in the Petition and in this Rehearing petition have been adjudicated by this Court in a very long line of consistent decisions, annunciated both before and since the case of *U S. v. Bekins,* 304 U.S. 27.

Local self government and local responsibility for traditionally State and local affairs, are fast "fading away".

This is a very dangerous time to permit the States to go over the line drawn in the Constitution. It may be argued that the States will be "mercifully" dealt with by the Congress, but the inevitable effect would be to make all of our States into federal dependencies, without any revenue source which would

be "independent and uncontrollable". See, *Federalist,* Nos. 32-33, by Hamilton.

The Court may take judicial notice of the alarming growth of begging at the doorstep of Congress by States, cities, school and other local bodies, urging more and more "Federal aid".

The taxation of earned incomes and of consumers has now reached, if it has not passed, the danger level. Use of the distinctively American direct, annual ad valorem land tax has fallen far behind the use of other taxes which hamper the incentive to work, save and invest. It is recognized by political scientists that direct, ad valorem land taxes always stimulate work, savings and investment and cannot increase the general cost of producing or distributing either butter or guns. This is the tax system commanded by the Oregon law governing respondent's fixed duties. It is constitutional, and no one has even claimed it is not.

> "If there existed in the courts, state or national, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the hands of a hostile judiciary." *Cheathem v. Norvekl,* 92 U.S. 561.

In his world renowned book, *"Progress and Poverty",* Henry George has warned:

> "To turn a republican government into a despotism the basest and most brutal, it is not necessary to formally change its constitution or abandon popular elections (for) forms are nothing when

substance is gone, and the forms of popular government are those from which the substance of freedom may most easily go. Extremes meet, and a government of universal suffrage and theoretical equality may, under conditions which impel the change, most readily become a despotism. For there depotism advances in the name and with the might of the people."

REASONS WHY PETITION SHOULD BE ALLOWED.

1. To resolve the conflict with the decisions of other courts of appeal on the same matter.

2. The court of appeals for the ninth circuit decided a federal question in a way in conflict with applicable decisions of this court both before and since *U.S. v. Bekins,* 304 U.S. 27, and has so far exceeded the accepted and usual scope of justiciable affairs and judicial authority as to make this court's power of supervision of imperative public importance.

It is respectfully submitted that the constitutional importance of this petition, and the Writ of Certiorari and the supplemental brief filed February 3, 1955 be re-examined and that petition therefor should be granted.

Dated, San Francisco, California,
February 21, 1955.

J. RUPERT MASON,
Petitioner Pro Se.

CERTIFICATE OF PETITIONER.

I, J. Rupert Mason, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
February 21, 1955.

J. RUPERT MASON,
Petitioner Pro Se.